

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Matthew Campos	Team: Squad #16	CCRB Case #: 201701182	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Tuesday, 02/07/2017 10:45 AM	Location of Incident: § 87(2)(b) 42nd Precinct stationhouse	Precinct: 40	18 Mo. SOL 8/7/2018	EO SOL 8/7/2018	
Date/Time CV Reported Wed, 02/08/2017 3:53 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 02/14/2017 11:25 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. DT3 Frankie Hernandez	2194	940254	042 DET
2. DT3 John Mccrossen	6353	919384	WARRSEC
3. POM Gary Capellan	07470	950154	WARRSEC
4. An officer			WARRSEC

Officer(s)	Allegation	Investigator Recommendation
A.DT3 John Mccrossen	Abuse: Detective John Mccrossen entered and searched § 87(2)(b), in the Bronx.	§ 87(2)(b)
B.POM Gary Capellan	Abuse: Police Officer Gary Capellan entered and searched § 87(2)(b), in the Bronx.	§ 87(2)(b)
C.DT3 John Mccrossen	Force: At § 87(2)(b), in the Bronx, Detective John Mccrossen used physical force against § 87(2)(b)	§ 87(2)(b)
D.POM Gary Capellan	Force: At § 87(2)(b), in the Bronx, Police Officer Gary Capellan used physical force against § 87(2)(b)	§ 87(2)(b)
E. An officer	Force: At § 87(2)(b), in the Bronx, an officer used physical force against § 87(2)(b)	§ 87(2)(b)
F. An officer	Force: At § 87(2)(b) in the Bronx, an officer restricted § 87(2)(b)'s breathing.	§ 87(2)(b)
G.DT3 John Mccrossen	Abuse: At § 87(2)(b) in the Bronx, Detective John Mccrossen did not obtain medical treatment for § 87(2)(b)	§ 87(2)(b)
H.POM Gary Capellan	Abuse: At § 87(2)(b) in the Bronx, Police Officer Gary Capellan did not obtain medical treatment for § 87(2)(b)	§ 87(2)(b)
I.DT3 Frankie Hernandez	Abuse: At the 42nd Precinct stationhouse Detective Frankie Hernandez did not obtain medical treatment for § 87(2)(b)	§ 87(2)(b)

## Case Summary

On February 8, 2017, Sergeant Brian Fragliossi reported § 87(2)(b)'s complaint to IAB via telephone. The CCRB received the complaint on February 14, 2017, via IAB Log #2017-5324.

On the morning of February 7, 2017, at approximately 10:45 a.m., § 87(2)(b) was in his mother's apartment in which he has a room, located at § 87(2)(b), in the Bronx when officers knocked at the door. His mother, § 87(2)(b) answered the door to Detective John McCrossen and Police Officer Gary Capellan of the Bronx Warrants Squad. The officers informed § 87(2)(b) that they had a warrant for § 87(2)(b) and entered the apartment (**Allegation A and B**). § 87(2)(b) went to § 87(2)(b)'s bedroom to get his shoes. The officers went to § 87(2)(b)'s room, and handcuffed him. § 87(2)(b) was walked to the hallway of the apartment, where Det. McCrossen and PO Capellan threw him to the ground (**Allegation C and D**). While he was on the ground, an unidentified officer placed a foot onto the back of his neck, which restricted § 87(2)(b)'s breathing (**Allegation E and F**). Det. McCrossen and PO Capellan then stood at § 87(2)(b)'s sides, lifted him by his arms and legs, and carried him out of his apartment (**Allegation C and D**, continued). After § 87(2)(b) was placed into the officers' van, he stated to the officers, "My neck hurts. I need a doctor." The officers laughed and stated, "Yeah right," and did not obtain medical treatment for § 87(2)(b) (**Allegation G and H**). § 87(2)(b) was taken to the 42<sup>nd</sup> Precinct stationhouse and left in the custody of Detective Frankie Hernandez of the 42<sup>nd</sup> Precinct Detective Squad. Det. Hernandez interviewed him, and while doing so § 87(2)(b) stated, "I need a doctor. I'm in pain. These guys hurt me. I was assaulted." Det. Hernandez laughed, and did not obtain medical care for § 87(2)(b) (**Allegation I**).

This case is 170 days old. The case is being submitted past the 90 day benchmark due to delays obtaining a sworn statements caused by § 87(2)(b)'s incarceration, and because Det. Mccrossen was not able to be interviewed until June 30, 2017 due to conflicts with scheduling. PO Capellan was also interviewed twice, which delayed completion of the investigation.

## Mediation, Civil and Criminal Histories

- This case was unsuitable for mediation because § 87(2)(b) is incarcerated.
- On July 18, 2017, the Comptroller's office confirmed that a Notice of Claim was not filed by or on behalf of § 87(2)(b) in regards to this incident (Board Review 01).
- § 87(2)(b); §§ 86(1)(3)(4); § 87(2)(c)

### Civilian and Officer CCRB Histories

- § 87(2)(b) [REDACTED]
  - [REDACTED]
  - [REDACTED]
  - [REDACTED]
  - [REDACTED]
  - [REDACTED]
  - [REDACTED]
  - [REDACTED]
- Det. Mccrossen has been a member of service for 20 years. There are eight prior allegations against Det. Mccrossen stemming from five cases. Two allegations were substantiated.
  - In CCRB case 201508062, a premises entered and searched allegation and a refusal to provide name and shield number allegation were substantiated against Det. Mccrossen. The Board recommended Command Discipline B for the entry/search, and the NYPD disposition was Command Discipline B. The Board recommended Command Discipline A for the refusal to provide his name and shield number, and the NYPD disposition was Instructions.
- PO Capellan has been a member of service for six years. There are 13 prior allegations against PO Capellan stemming from five cases. Two previous allegations were substantiated.
  - In CCRB case 201503326, a physical force allegation and a property damage allegation were substantiated against PO Capellan. The Board recommended Command Discipline A for both substantiated allegations, and the NYPD disposition was Command Discipline A for both as well.
- Det. Hernandez has been a member of service for 11 years. There are five prior allegations against Det. Hernandez stemming from four cases. Two previous allegations were substantiated.
  - In CCRB case 201501952, a premises entered and searched allegation was substantiated against Det. Hernandez. The Board recommended Command Discipline A, and the NYPD disposition was Command Discipline A.
  - In CCRB case 201604634, a refusal to provide a name and shield number allegation was substantiated against Det. Hernandez. The Board recommended Instructions; the case is awaiting an NYPD disposition.

### Potential Issues

- § 87(2)(b) [REDACTED] provided a phone statement to the investigation, but failed to provide a sworn statement.

## **Findings and Recommendations**

### **Explanation of Subject Officer Identification**

- § 87(2)(b) alleged that after he was thrown to the floor, an officer placed their foot on the back of his neck, causing his breathing to become restricted (**Allegation E and F**). However, § 87(2)(b) could not identify whether Det. Mccrossen or PO Capellan was the subject officer. Officer interviews did not provide information which would identify the correct subject officer, no witness accounts were available, and the investigation was unable to locate any evidence to identify this officer. § 87(2)(g)

### **Allegations not pleaded**

- When § 87(2)(b) provided her phone statement, she alleged that an officer searched § 87(2)(b)'s cabinets. However, as noted above, § 87(2)(b) did not provide a sworn statement to the investigation. Therefore, a search allegation has not been pleaded.

**Allegation A—Abuse of Authority: Detective John Mccrossen entered and searched § 87(2)(b), in the Bronx.**

**Allegation B—Abuse of Authority: Police Officer Gary Capellan entered and searched § 87(2)(b) in the Bronx.**

It is undisputed that Det. Mccrossen and PO Capellan entered § 87(2)(b)'s apartment.

In his sworn statement, § 87(2)(b) stated § 87(2)(b) opened the door to Det. Mccrossen and PO Capellan, and the officers walked past her into the apartment displaying a bench warrant with § 87(2)(b)'s picture on it. In response § 87(2)(b) told the officers that they did not have permission to be at the location (Board Review 04).

In Det. Mccrossen's Warrant Investigative Data he detailed the investigative steps involving the bench warrant for § 87(2)(b) § 87(2)(b)

On February 7, 2017, Det. Mccrossen noted that § 87(2)(b) greeted the officers at the door the apartment and, "Stated that she just returned home and did not know if subject was in apt and invited I/O into apt. Mrs. § 87(2)(b) gestured to rear bedroom and escorted I/O to bedroom" (Board Review 05).

Det. Mccrossen's testified that he appeared at § 87(2)(b) because multiple investigative actions determined it to be § 87(2)(b)'s address. At the time that he and PO Capellan appeared at the location, they were unaware if § 87(2)(b) was present in the apartment. After § 87(2)(b) answered the door, Det. Mccrossen showed her a bench warrant for her son, and asked her if he was home. In a loud and clear voice, § 87(2)(b) stated that she did not know if he was home. As she spoke, § 87(2)(b) gestured toward the hallway of her apartment by bending her neck and pointing with her head. Det. Mccrossen understood the gesture as § 87(2)(b) pointing to § 87(2)(b)'s position and not wanting § 87(2)(b) to be aware of it. The officers entered the apartment, and § 87(2)(b) led Det. Mccrossen to her bedroom, where she pointed to a closed closet, to indicate that § 87(2)(b) was inside the closet. Det. Mccrossen denied entering the apartment by walking past § 87(2)(b) and stated that § 87(2)(b) did not make

any statements indicating that the officers did not have permission to be there or that she wanted the officers to leave (Board Review 06).

PO Capellan testified that § 87(2)(b) made the same gesture that Det. Mccrossen described, and that he interpreted the gesture the same way. After the officers entered the apartment, PO Capellan remained by the entrance while Det. Mccrossen went to the room § 87(2)(b) had gestured towards (Board Review 07).

People v. Smith 806 N.Y.S. 2d 447, states that, “A bench warrant, which is the equivalent of an arrest warrant, permits entry into what the police reasonably believe to be the suspect's residence provided that at the time of entry the police reasonably believe that the suspect is present” (Board Review 08).

Based on the documentary evidence of Det. Mccrossen’s investigative work, he and PO Capellan had a reasonable belief that § 87(2)(b) was § 87(2)(b)’s residence. However, Det. Mccrossen and PO Capellan testified at the time they arrived at the location they were unaware if § 87(2)(b) was present in the apartment.

§ 87(2)(g)  
[REDACTED]

[REDACTED]

**Allegation C—Force: At § 87(2)(b), in the Bronx, Detective John Mccrossen used physical force against § 87(2)(b)**  
**Allegation D—Force: At § 87(2)(b), in the Bronx, Police Officer Gary Capellan used physical force against § 87(2)(b)**

In his sworn statement, § 87(2)(b) stated that officers entered § 87(2)(b)’s room while he was retrieving his shoes. The officers each grabbed one of his arms, and placed him into handcuffs. § 87(2)(b) was then walked to the apartment’s hallway. § 87(2)(b) stood in the hallway and looked towards § 87(2)(b)’s room when Det. Mccrossen and PO Capellan placed pressure on his shoulders, and threw him to the ground, causing him to land face down. § 87(2)(b) was kept on the floor for two to three minutes, and he screamed in pain. As a result of the force, § 87(2)(b) had scratches below his left eye and injury to his neck that he did not describe despite repeated questioning. Det. Mccrossen and PO Capellan lifted § 87(2)(b) by his arms and legs, and carried him face down out of the apartment and to the building elevator, causing § 87(2)(b) pain (Board Review 04).

Det. McCrossen testified that § 87(2)(b) was discovered hiding in § 87(2)(b)'s closet. After ordering § 87(2)(b) out of the closet, Det. McCrossen handcuffed him without difficulty. Det. McCrossen held onto one of § 87(2)(b)'s biceps as they walked through the hallway to exit the apartment; Det. McCrossen did not recall if PO Capellan was making physical contact with § 87(2)(b) at that time. § 87(2)(b) then dropped his weight, causing him to fall to the ground on his right side, and causing Det. McCrossen's knee to make contact with the floor. § 87(2)(b) rolled onto his stomach and did not move from that position. Det. McCrossen knelt next to § 87(2)(b) while he and § 87(2)(b) told him to get up. After one minute, § 87(2)(b) got up without assistance. Det. McCrossen and PO Capellan continued to guide § 87(2)(b) out of the apartment by each holding one of § 87(2)(b)'s biceps. As they reached the apartment's front door, § 87(2)(b) used his right leg to kick against the door frame, causing him and the officers to be pushed back. While one of § 87(2)(b)'s legs was still up, Det. McCrossen and PO Capellan tilted § 87(2)(b) back, and lifted him from the floor. Det. McCrossen supported § 87(2)(b)'s right side supporting his back with one hand, and his knee with the other. The officers carried § 87(2)(b) out of the apartment face up, and placed him onto his feet at the elevator of his building. § 87(2)(b) was carried out of the apartment in order to overcome his non-compliance. Det. McCrossen denied throwing § 87(2)(b) to the floor (Board Review 06).

In Det. McCrossen's Warrant Investigative Data, he recorded that, "Subject was handcuffed and refused to exit apartment. I/O and partner carried subject building elevator. Where subject agreed to walk on his own" (Board Review 05).

PO Capellan also testified that § 87(2)(b) dropped his weight after the officers placed § 87(2)(b) in handcuffs. However, PO Capellan testified that § 87(2)(b) dropped his weight multiple times, and that he fell on his side each time. After dropping his weight multiple times, the officers each stood at § 87(2)(b)'s sides and lifted him face up by each holding an arm and a leg. The officers did so to prevent any injury that could be caused by the force of § 87(2)(b) dropping his weight. PO Capellan denied throwing § 87(2)(b) to the floor (Board Review 07 and Board Review 09).

The medical records obtained from § 87(2)(b) recorded that § 87(2)(b)'s no lacerations or abrasions on his face, no open wounds in his mouth, and no fractures to his jaw (Board Review 10).

NYPD Patrol Guide Procedure 221-02 defines "Passive Resisting" as minimal physical contact to prevent a member of service from performing their duties, and provides as an example a subject going limp when being taken into custody. The section advises officers to "apply no more than the reasonable force necessary to gain control" (Board Review 11).

§ 87(2)(b) and the officers all testified that he was carried out of his apartment after being on the floor. However, § 87(2)(b)'s testimony did not describe any resistance that would warrant the force used to take him to the floor or carry him out. The officers testified that § 87(2)(b) was on the floor as a result of his passive resistance, and that they carried him to overcome his resistance, which NYPD Patrol Guide Procedure 221-02 instructs them to do.

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**Allegation E—Force: At § 87(2)(b), in the Bronx, an officer used physical force against § 87(2)(b).**  
**Allegation F—Force: At § 87(2)(b), in the Bronx, an officer restricted § 87(2)(b) s breathing.**

§ 87(2)(b) alleged that after Det. Mccrossen and PO Capellan threw him to the ground, one of the officers placed their foot onto the back of his neck, and held it there for two to three minutes. However, § 87(2)(b) was unaware of which officer did so because he was face down. The foot at the back of his neck caused him to be unable to expand his chest, and restricted his breathing (Board Review 04).

Det. Mccrossen and PO Capellan both denied that either of them placed their foot on the back of § 87(2)(b) s neck, or did anything to restrict his breathing. The officers also stated that § 87(2)(b) did not make complaints of having his breathing restricted (Board Review 06 and Board Review 07).

§ 87(2)(g)

**Allegation G—Abuse of Authority: At § 87(2)(b) in the Bronx, Detective John Mccrossen did not obtain medical treatment for § 87(2)(b).**  
**Allegation H—Abuse of Authority: At § 87(2)(b) in the Bronx, Police Officer Gary Capellan did not obtain medical treatment for § 87(2)(b).**  
**Allegation I—Abuse of Authority: At the 42<sup>nd</sup> Precinct stationhouse, Detective Frankie Hernandez did not obtain medical treatment for § 87(2)(b).**

§ 87(2)(g)

§ 87(2)(b) testified that after § 87(2)(b) was apprehended, he was placed inside of Det. Mccrossen and PO Capellan's vehicle. Right after § 87(2)(b) was placed in the vehicle, he told the officers that he had been hurt during his arrest and stated, "My neck hurts. I need a doctor." The officers laughed, and stated, "Yeah, right." The officers then drove § 87(2)(b) to the 42<sup>nd</sup> Precinct stationhouse, and left him with Det. Hernandez, but made no effort to obtain medical attention.

At approximately 1:00-2:00 p.m., Det. Hernandez took § 87(2)(b) into an interrogation room, and § 87(2)(b) requested medical attention a second time. In response, Det. Hernandez stated, “We’ll see about that.” § 87(2)(b) did not obtain medical care until he was taken to Bronx Central Booking at approximately 9:00-10:00 p.m., when he notified an EMS worker that he needed medical attention (Board Review 04). In his follow up statement § 87(2)(b) clarified that he stated, “I need to see a doctor. I’m in pain. These guys hurt me. I was assaulted,” to Det. Hernandez at the 42nd Precinct stationhouse (Board Review 12).

In their testimonies, both Det. McCrossen and PO Capellan denied that § 87(2)(b) stated, “My neck hurts. I need a doctor.” The officers denied that § 87(2)(b) made any request for medical attention or complained of any injuries (Board Review 06 and Board Review 07).

In his testimony, Det. Hernandez denied that § 87(2)(b) made any requests for medical attention or complained of any injuries. Det. Hernandez added that no formal interrogation was conducted, and at no point was § 87(2)(b) taken to any room other than the fingerprinting area, the waiting cell, and the restroom (Board Review 13).

The 42<sup>nd</sup> Precinct Command Log for February 7, 2017, showed that § 87(2)(b) was brought to the 42<sup>nd</sup> Precinct stationhouse and Det. Hernandez processed his arrest at 10:48 AM. § 87(2)(b)'s conditional was described as apparently normal and no medical attention was required. At 3:50 p.m., Det. Hernandez processed three more of § 87(2)(b)'s arrests. Again, § 87(2)(b)'s condition was described as apparently normal and no medical attention was required. At 11:51 p.m., § 87(2)(b) was taken to Bronx Central Bookings. At 1:27 p.m. on February 8, 2017, § 87(2)(b) was taken to § 87(2)(b) (Board Review 14).

A TRI Supervisor’s Assessment Report prepared by Captain Jeffrey Brienza of the Bronx Patrol Borough noted that § 87(2)(b) made complaints of injury to EMS while being interviewed at Bronx Central Booking (Board Review 15).

§ 87(2)(b)'s medical records show that he was registered at § 87(2)(b) and that he was brought by NYPD officers (Board Review 10).

The documentary evidence obtained from the NYPD and § 87(2)(b) Hospital confirmed that § 87(2)(b) was taken to Bronx Central Booking, where he was interviewed by EMS, and that he ultimately received medical care. Additionally, the Command Log showed that § 87(2)(b) was in apparently normal condition, and that he did not need medical attention at the time of his arrest processing.

However, the documentary evidence does not indicate whether or not § 87(2)(b) requested medical attention prior to his interview with EMS at Bronx Central Booking, or that requested medical care specifically from the subject officers. While it is possible that § 87(2)(b) did so, there is no additional evidence available to determine whether or not § 87(2)(b) requested medical attention from the subject officers, or prior to his interview with EMS at Bronx Central Booking.

§ 87(2)(g)



Squad:

Investigator: \_\_\_\_\_  
Signature Print Date

Squad Leader: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date